Supreme Court, U.S.
FILED
MAR 7 1980
MICHAEL RODAK, JR., CLERK

No. 79-1350

In the Supreme Court of the United States

JOEL D. RUBIN et al., and JAMES D. ALEX, and JOSEPH RUBENSTEIN, et al.,

Plaintiffs-Petitioners,

vs.

U. N. INDUSTRIES, INC., et al.,

Defendants-Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

PAGE

Appendix—

Opinion of the Seventh Court of Appeals dated October 30, 1979 ..... App. 19

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Argued September 24, 1979
October 30, 1979.

Before
Hon. Luther M. Swygert, Circuit Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. William J. Bauer, Circuit Judge

JOEL D. RUBIN, et al.,

Plaintiffs-Appellants,

Nos. 78-1463, 79-1071, 1072, 1173 vs.

U. N. INDUSTRIES, INC., et al.,

Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 70 C 189

Bernard M. Decker, *Judge*

Appellants have come before this court expostulating multifarious objections to and concerning a class action settlement agreement entered in the district court. Although it was most difficult to discern precisely appellants' complaints from the convoluted, confusing, and fragmented approach to the issues taken in their briefs, we believe the arguments basically concern two main issues: (1) whether the settlement agreement was fair and reasonable particularly in the light of the class membership limitations pre-

scribed by the district court; and (2) whether the district court properly refused to remove a receiver previously appointed by it to oversee the operations of the corporation, U. N. Industries.[1]

THE SETTLEMENT AGREEMENT

It is well established that a settlement approval by the district court will not be overturned absent a clear showing of the trial court's abuse of its discretion. *McDonald* v. *Chicago Milwaukee Corp.*, 565 F.2d 416 (7th Cir. 1977). The relevant factors to be utilized in evaluating a settlement agreement are: (1) the strength of the plaintiff's case on the merits balanced against the consideration offered; (2) the defendant's ability to pay; (3) the complexity, length, and expense of further litigation; and (4) the degree of support for and opposition to the settlement. *Manual for Complex Litigation* §1,46 at 30 (1977). After a complete examination of the briefs filed before this court and a thorough review of the proceedings below as presented in the briefs and at oral argument, we are convinced that the settlement agreement was fair and reasonable to all parties when evaluated in light of the above listed factors. The appellees have set forth some or most of their arguments on the merits and have candidly admitted the varying degrees of potential success against these defendants. They have also particularized the various defendants' ability to pay potential judgments and have described the expected

[1] We note that the jurisdiction for this appeal is apparently based upon Fed. R. Civ. P. 54(b) and the final judgment entered below as to some of the defendants. Given this limited "finality" of the lower court's judgment, we believe substantial questions exist as to the appealability of the receivership question at this time. However, in the interest of bringing this long, extended litigation to a final close, we will consider the merits of this contention here.

complexity, length and expense of further litigation. In light of the fact that appellants here are, evidently, the sole objectors to the settlement agreement, we find the district court properly exercised its discretion in granting its approval.

Appellants' main objection to the agreement appears to be that it apparently excluded them from sharing in the class recovery. The district court limited membership in the class to those individuals who purchased free-trading (non-legend) shares on the over-the-counter market through a broker-dealer from July 1, 1968 to and including December 26, 1969. The district court, however, also made membership available to all individuals who could show they were damaged by the defendants' alleged misconduct. Appellants purchased their shares directly from the corporation, sometimes, apparently, without giving consideration, and as yet have been excluded from the class.

We believe the district court's decision to limit membership in the class as described above was fair and reasonable to all involved. Appellees have shown that those excluded were shareholders whose interests in recovering were either unsupportable or potentially antagonistic to the great majority of the remaining members. Furthermore, the district court's order did not preclude any individuals with a valid claim from participating in the recovery. In light of these considerations, we can find no fault in the district court's orders approving the settlement agreement.

THE RECEIVER

Appellants have also objected to the trial court's refusal to remove the receiver previously appointed by it to oversee the operations of U. N. Industries. However, they have utterly failed to present any facts justifying, or "good rea-

son'' for, such a removal. *United States* v. *Lias,* 135 F. Supp. 35 (N.D.W.Va., 1955). Appellants' main objection is that the receivership should be terminated because a ''majority'' of the shareholders of U. N. Industries voted for its termination at a ''shareholders meeting.'' Even if such a vote, if valid, could in some way override or be binding upon the district court in this situation, which we question, we believe the district court correctly determined that the ''vote'' was a nullity. The court found that substantial questions existed regarding the validity of the shares voted at the so-called meeting, and the adequacy of the notice that the meeting was to be held. In light of these facts, the district court, in our opinion, properly exercised its discretion in refusing to remove the receiver.

REMAINING CONTENTIONS

We find the remainder of the appellants' sundry contentions also without merit. Appellants argue that a certain reconveyance of property by the receiver back to one of the defendants as part of an earlier settlement should be rescinded because the reconveyance was made while the receiver lacked certain material information. Upon a review of the proceedings, however, it is apparent the district court properly found the receiver had full knowledge of the circumstances surrounding the reconveyance. We are satisfied, furthermore, that substantial and insurmountable difficulties would arise in rescinding a reconveyance that occurred over eight years ago, and the appellants have made no showing that such a rescission could place the parties in the status quo. We, therefore, affirm the district court on this issue.

As to the limitations placed by the trial court upon appellants' attorney's participation in the proceedings below, we can only say that after reviewing the proceedings as

set forth in the briefs and at oral argument, it appears to us that the trial court exhibited far more patience than was reasonably necessary or called for in tolerating appellants' attorney's conduct. It is apparent that this protracted litigation has already been greatly prolonged by appellants' attorney's unwarranted and unfounded accusations, objections, and general deportment below. After a full review of those proceedings, it is clear that appellants' claim that they were not given a full and fair hearing is without merit.

We find no merit in any other matter referred to in the course of the appellants' rambling brief.

CONCLUSION

For the foregoing reasons, the orders of the trial court here under review are affirmed.

ORDERS AFFIRMED.